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Attorneys for Defendants  
10 INSTITUTIONAL TRADING CORPORATION (erroneously  
sued as "Institutional Trading Company") and IT.COM  
11

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION  
15

16 KWONG YUNG,  
17 Plaintiff,  
18 v.  
19 INSTITUTIONAL TRADING COMPANY, a  
corporation, IT.COM, a corporation, DOES 1  
20 to 10,  
21 Defendant.  
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Case No. 07-CV-5949

**DECLARATION OF MICHAEL D.  
WEIL IN SUPPORT OF  
DEFENDANTS' MOTION TO  
DISMISS FOR LACK OF PERSONAL  
JURISDICTION PURSUANT TO  
F.R.C.P. 12 (B)(2)**

1 I, Michael D. Weil, declare as follows:

2 1. I am an attorney duly licensed to practice law before this Court, and am an  
3 associate with the law firm of Orrick, Herrington & Sutcliffe, LLP, counsel of record for  
4 defendants Institutional Trading Corporation and IT.com. The facts set forth in this declaration I  
5 know to be true of my own personal knowledge, except where such facts are stated to be based on  
6 information and belief, and those facts I believe to be true. I could and would testify competently  
7 to the matters set forth in this declaration.

8 2. In an effort to resolve this litigation informally, and without motion practice, the  
9 parties stipulated to extend defendants' deadline for filing an answer to the complaint to January  
10 7, 2008. I spoke with plaintiff's counsel in early December, advising him that California did not  
11 have personal jurisdiction over defendants and suggested that the complaint be dismissed and re-  
12 filed in Washington, D.C. I followed up this conversation with a letter to plaintiff's counsel on  
13 December 11, 2007. Plaintiff's counsel responded the same day with a letter listing several  
14 arguments why Plaintiff contends that San Francisco is proper. Attached hereto as Exhibit "A"  
15 are true and correct copies of the letters exchanged. Due to the fact that plaintiff would not  
16 dismiss his suit and re-file it in the proper jurisdiction, defendants were forced to file this motion  
17 to dismiss.

18 3. Attached hereto as Exhibit "B" is a true and correct copy of the pertinent sections  
19 of the Federal Judicial Caseload Statistics March 31, 2007, published by the Statistics Division of  
20 the Administrative Office of the United States Courts.

21 I declare under penalty of perjury that the foregoing is true and correct.

22 This declaration was executed in San Francisco, California on January 7, 2008.

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Michael D. Weil

# **EXHIBIT A**



ORRICK, HERRINGTON & SUTCLIFFE LLP  
1000 California Street, Suite 1000  
San Francisco, CA 94104  
Tel: (415) 773-5794  
Fax: (415) 773-5795  
www.orricks.com

December 11, 2007

Michael D. Weil  
(415) 773-5794  
mweil@orrick.com

VIA EMAIL AND U.S. MAIL

Mr. Albert Boasberg, Esq.  
Attorney At Law  
155 Montgomery Street, Suite 1010  
San Francisco, CA 94104

Re: Yung v IT. Com

Dear Mr. Boasberg:

On December 5, 2007, the Court approved the parties' November 16, 2007 stipulation to extend defendant's time to respond to Mr. Yung's complaint until January 7, 2008. Part of the purpose for this continuance was a courtesy to defendant, but another important reason was to give you and your client an opportunity to discuss the appropriate jurisdiction for his lawsuit.

As you and I discussed, we intend to file a motion to dismiss for lack of personal jurisdiction, forum non-conveniens and improper venue. Defendant contends that the proper venue for Mr. Yung's claims is Washington, D.C., and not California, because California lacks personal jurisdiction of defendants.

Our response to the complaint is currently due January 7, 2008. Given the holiday season, we must start working on the motion very soon.

Accordingly, as a courtesy, please let me know by Friday, December 14, 2007 whether plaintiff intends to dismiss his action without prejudice to re-file in Washington, D.C., or whether plaintiff intends to litigate in California and, therefore, we need to prepare and file our motion to dismiss.

Thank you for your courtesy and cooperation.

Very truly yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP



Michael D. Weil

**ALBERT L. BOASBERG**

ATTORNEY AT LAW

ALEXANDER BUILDING, SUITE 1010

155 MONTGOMERY STREET

SAN FRANCISCO 94104

TELEPHONE (415) 989-8960

FACSIMILE (415) 990-8061

December 11, 2007

Michael D. Weil, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2669

Re: Yung vs. Institutional Trading Company,  
etc.

Dear Mr. Weil:

My client wishes to point out the following with respect to the venue issue:

1. A key witness, Anthony Di Franco, lives in the Bay Area, as does my client.
2. The work performed by my client for which suit is brought, was in the Bay Area.
3. The employment agreement was entered into by my client in San Francisco.
4. My client started working for your client in 2005 while he resided in the Bay Area.
5. The persons and firms with whom my client had contact in the course of his employment were all in the Bay Area.

December 11, 2007

Page 2

6. IT.com and Institutional Trading Corporation do business in the State of California.

Please let me know whether the foregoing causes your client to change its views on the venue issue.

Thank you for your cooperation.

Sincerely yours,

  
ALBERT L. BOASBERG

ALB:cc

# **EXHIBIT B**

**Table C.**  
**U.S. District Courts—Civil Cases Commenced, Terminated, and Pending**  
**During the 12-Month Periods Ending March 31, 2006 and 2007**

Circuit	Filings			Terminations			Pending		
	2006	2007	Percent Change <sup>1</sup>	2006	2007	Percent Change <sup>1</sup>	2006 <sup>2</sup>	2007	Percent Change <sup>1</sup>
<b>TOTAL</b>	<b>244,068</b>	<b>278,272</b>	<b>14.0</b>	<b>281,220</b>	<b>254,850</b>	<b>-9.4</b>	<b>245,930</b>	<b>269,352</b>	<b>9.5</b>
<b>DC</b>	<b>2,566</b>	<b>2,388</b>	<b>-6.9</b>	<b>2,598</b>	<b>2,757</b>	<b>6.1</b>	<b>3,275</b>	<b>2,906</b>	<b>-11.3</b>
<b>1ST</b>	<b>6,139</b>	<b>5,739</b>	<b>-6.5</b>	<b>6,539</b>	<b>5,958</b>	<b>-8.9</b>	<b>7,087</b>	<b>6,868</b>	<b>-3.1</b>
ME	448	396	-11.6	509	398	-21.8	293	291	-0.7
MA	3,213	3,064	-4.6	3,316	3,230	-2.6	3,859	3,693	-4.3
NH	490	475	-3.1	550	487	-11.5	410	398	-2.9
RI	580	538	-7.2	540	588	8.9	813	763	-6.2
PR	1,408	1,266	-10.1	1,824	1,255	-22.7	1,712	1,723	0.6
<b>2ND</b>	<b>22,422</b>	<b>27,879</b>	<b>24.3</b>	<b>22,080</b>	<b>21,999</b>	<b>-0.4</b>	<b>32,103</b>	<b>37,983</b>	<b>18.3</b>
CT	2,020	2,168	7.3	2,208	2,398	8.6	2,739	2,509	-8.4
NY,N	1,687	1,532	-9.2	1,511	1,574	4.2	2,715	2,673	-1.5
NY,E	6,126	6,899	12.6	6,203	5,796	-6.6	7,447	8,550	14.8
NY,S	10,520	15,476	47.1	10,156	10,235	0.8	16,171	21,412	32.4
NY,W	1,720	1,517	-11.8	1,654	1,690	2.2	2,698	2,525	-6.4
VT	349	287	-17.8	348	306	-12.1	333	314	-5.7
<b>3RD</b>	<b>27,444</b>	<b>49,423</b>	<b>80.1</b>	<b>29,653</b>	<b>40,194</b>	<b>35.5</b>	<b>22,439</b>	<b>31,668</b>	<b>41.1</b>
DE	1,067	862	-19.2	1,367	932	-31.8	1,410	1,340	-5.0
NJ	6,103	6,582	7.8	6,478	6,609	2.0	5,818	5,791	-0.5
PA,E	14,439	36,661	153.9	15,604	27,135	73.9	9,602	19,128	99.2
PA,M	2,819	2,526	-10.4	2,957	2,535	-14.3	2,035	2,026	-0.4
PA,W	2,633	2,383	-9.5	2,959	2,675	-9.6	2,418	2,126	-12.1
VI	383	409	6.8	288	308	6.9	1,156	1,257	8.7
<b>4TH</b>	<b>18,241</b>	<b>16,996</b>	<b>-6.8</b>	<b>38,280</b>	<b>17,825</b>	<b>-53.4</b>	<b>14,363</b>	<b>13,534</b>	<b>-5.8</b>
MD	3,532	3,508	-0.7	3,652	3,528	-3.4	2,944	2,924	-0.7
NC,E	1,317	1,283	-2.6	1,398	1,449	3.6	1,373	1,207	-12.1
NC,M	1,201	1,073	-10.7	1,277	1,106	-13.4	1,011	978	-3.3
NC,W	1,004	1,051	4.7	1,082	1,169	8.0	1,053	935	-11.2
SC	3,768	3,656	-3.0	23,072	3,866	-83.2	3,183	2,973	-6.6
VA,E	3,950	3,485	-11.8	4,149	3,564	-14.1	2,012	1,933	-3.9
VA,W	1,382	1,235	-10.6	1,498	1,268	-15.4	791	758	-4.2
WV,N	643	621	-3.4	609	591	-3.0	719	749	4.2
WV,S	1,444	1,084	-24.9	1,543	1,284	-16.8	1,277	1,077	-15.7



Table C. (March 31, 2007—Continued)

Circuit	Filings			Terminations			Pending		
	2006	2007	Percent Change <sup>1</sup>	2006	2007	Percent Change <sup>1</sup>	2006 <sup>2</sup>	2007	Percent Change <sup>1</sup>
9TH									
AK	41,030	41,105	0.2	40,977	40,867	-0.3	41,313	41,551	0.6
AZ	367	347	-5.4	338	376	11.2	428	399	-6.8
CA,N	5,006	3,616	-27.8	4,343	5,163	18.9	4,962	3,415	-31.2
CA,E	6,624	7,680	15.9	5,997	6,265	4.5	6,679	8,094	21.2
CA,C	4,197	4,840	15.3	3,897	4,282	9.9	5,662	6,240	9.8
CA,S	11,585	11,590	0.0	12,530	11,455	-8.6	10,700	10,835	1.3
HI	2,646	2,898	9.5	2,668	2,755	3.3	1,997	2,140	7.2
ID	785	690	-12.1	767	708	-7.7	772	754	-2.3
MT	567	545	-3.9	582	571	-1.9	677	651	-3.8
NV	630	640	1.6	591	757	28.1	875	758	-13.4
OR	2,232	2,332	4.5	2,149	2,062	-4.0	2,470	2,740	10.9
WA,E	2,572	2,452	-4.7	2,611	2,427	-7.0	2,383	2,408	1.0
WA,W	736	602	-18.2	777	675	-13.1	589	516	-12.4
GUAM	2,997	2,782	-7.2	3,613	3,303	-8.6	3,001	2,480	-17.4
NMI	39	38	-2.6	80	39	-51.3	40	39	-2.5
	47	53	12.8	34	29	-14.7	58	82	41.4
10TH									
CO	10,089	9,976	-1.1	10,812	10,518	-2.7	9,303	8,761	-5.8
KS	2,766	2,746	-0.7	2,887	2,865	-0.8	2,160	2,041	-5.5
NM	1,537	1,541	0.3	1,598	1,603	0.3	1,476	1,414	-4.2
OK,N	1,300	1,431	10.1	1,439	1,366	-5.1	1,375	1,440	4.7
OK,E	779	734	-5.8	929	808	-13.0	886	812	-8.4
OK,W	541	547	1.1	567	590	4.1	503	460	-8.5
UT	1,576	1,522	-3.4	1,713	1,613	-5.8	1,159	1,068	-7.9
WY	1,275	1,165	-8.6	1,346	1,329	-1.3	1,380	1,216	-11.9
	315	290	-7.9	333	344	3.3	364	310	-14.8
11TH									
AL,N	26,166	35,128	34.3	28,080	27,297	-2.8	21,731	29,562	36.0
AL,M	2,766	4,984	80.2	3,186	3,678	15.4	2,577	3,883	50.7
AL,S	1,274	1,180	-7.4	1,244	1,296	4.2	1,259	1,143	-9.2
FL,N	772	939	21.6	778	828	6.4	705	816	15.7
FL,M	1,498	1,647	9.9	1,540	1,583	2.8	1,262	1,326	5.1
FL,S	6,692	13,489	101.6	6,796	6,429	-5.4	5,224	12,284	135.1
GA,N	6,829	7,062	3.4	7,528	7,277	-3.3	5,710	5,495	-3.8
GA,M	3,984	3,614	-9.3	4,615	4,009	-13.1	3,050	2,655	-13.0
GA,S	1,194	1,131	-5.3	1,168	1,089	-6.8	1,057	1,099	4.0
	1,157	1,082	-6.5	1,225	1,108	-9.6	887	861	-2.9

NOTE: PENDING CASES EXCLUDE ASBESTOS CASES TRANSFERRED TO PAE UNDER ORDER 875 OF THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION.

<sup>1</sup> PERCENT CHANGE NOT COMPUTED WHEN FEWER THAN 10 CASES REPORTED FOR THE PREVIOUS PERIOD.<sup>2</sup> REVISED.

**Table D. Cases  
U.S. District Courts—Criminal Cases Commenced, Terminated, and Pending  
During the 12-Month Periods Ending March 31, 2006 and 2007**

Circuit and District	Filings			Terminations			Pending		
	2006	2007	Percent Change <sup>1</sup>	2006	2007	Percent Change <sup>1</sup>	2006 <sup>2</sup>	2007	Percent Change <sup>1</sup>
<b>TOTAL</b>	<b>68,670</b>	<b>66,629</b>	<b>-3.0</b>	<b>67,530</b>	<b>68,584</b>	<b>1.6</b>	<b>71,652</b>	<b>69,697</b>	<b>-2.7</b>
<b>DC</b>	<b>412</b>	<b>380</b>	<b>-7.8</b>	<b>491</b>	<b>474</b>	<b>-3.5</b>	<b>1,368</b>	<b>1,274</b>	<b>-6.9</b>
<b>1ST</b>	<b>1,430</b>	<b>1,309</b>	<b>-8.9</b>	<b>1,321</b>	<b>1,349</b>	<b>2.1</b>	<b>1,841</b>	<b>1,795</b>	<b>-2.5</b>
ME	208	175	-15.9	249	193	-22.5	162	144	-11.1
MA	346	373	7.8	374	417	11.5	827	783	-5.3
NH	293	235	-19.8	189	250	32.3	273	258	-5.5
RI	138	129	-6.5	143	126	-11.9	230	233	1.3
PR	445	391	-12.1	366	363	-0.8	349	377	8.0
<b>2ND</b>	<b>3,292</b>	<b>3,279</b>	<b>-0.4</b>	<b>3,494</b>	<b>3,229</b>	<b>-7.6</b>	<b>7,535</b>	<b>7,585</b>	<b>0.7</b>
CT	276	281	1.8	274	272	-0.7	409	418	2.2
NY,N	432	437	1.2	415	353	-14.9	549	633	15.3
NY,E	747	776	3.9	798	744	-6.8	2,064	2,096	1.6
NY,S	1,126	975	-13.4	1,298	1,087	-16.3	3,674	3,562	-3.0
NY,W	583	662	13.6	560	627	12.0	651	686	5.4
VT	128	148	15.6	149	146	-2.0	188	190	1.1
<b>3RD</b>	<b>2,926</b>	<b>2,979</b>	<b>1.8</b>	<b>3,209</b>	<b>3,034</b>	<b>-5.5</b>	<b>3,773</b>	<b>3,718</b>	<b>-1.5</b>
DE	116	162	39.7	161	130	-19.3	164	196	19.5
NJ	1,018	1,048	2.9	1,113	1,127	1.3	1,179	1,100	-6.7
PA,E	616	686	11.4	855	682	-20.2	904	908	0.4
PA,M	531	453	-14.7	505	447	-11.5	539	545	1.1
PA,W	511	513	0.4	439	530	20.7	530	513	-3.2
VI	134	117	-12.7	136	118	-13.2	457	456	-0.2
<b>4TH</b>	<b>8,361</b>	<b>8,635</b>	<b>3.3</b>	<b>7,533</b>	<b>8,718</b>	<b>15.7</b>	<b>10,350</b>	<b>10,267</b>	<b>-0.8</b>
MD	1,662	1,660	-0.1	1,363	1,373	0.7	2,669	2,956	10.8
NC,E	1,290	1,104	-14.4	1,025	1,670	62.9	1,884	1,318	-30.0
NC,M	358	410	14.5	395	392	-0.8	279	297	6.5
NC,W	520	477	-8.3	463	451	-2.6	682	706	3.8
SC	779	839	7.7	780	818	4.9	830	851	2.5
VA,E	2,856	3,281	14.9	2,588	3,033	17.2	2,984	3,232	8.3
VA,W	371	349	-5.9	370	438	18.4	580	491	-15.3
WV,N	279	275	-1.4	258	259	0.4	224	240	7.1
WV,S	246	240	-2.4	291	284	-2.4	218	174	-20.2

Table D. Cases (March 31, 2007—Continued)

Circuit and District	Filings			Terminations			Pending		
	2006	2007	Percent Change <sup>1</sup>	2006 <sup>2</sup>	2007	Percent Change <sup>1</sup>	2006 <sup>2</sup>	2007	Percent Change <sup>1</sup>
<b>9TH</b>									
AK	13,573	12,904	-4.9	13,578	13,541	-0.3	13,362	12,725	-4.8
AZ	184	144	-21.7	181	162	-10.5	152	134	-11.8
CAN	3,895	3,681	-5.5	3,725	4,032	8.2	3,019	2,668	-11.6
CAE	682	614	-10.0	670	622	-7.2	924	916	-0.9
CAC	985	835	-15.2	843	816	-3.2	1,169	1,188	1.6
CAS	1,281	1,092	-14.8	1,504	1,331	-11.5	2,031	1,792	-11.8
HI	2,508	2,890	15.2	2,495	2,958	18.6	1,838	1,770	-3.7
ID	423	343	-18.9	570	371	-34.9	494	466	-5.7
MT	235	225	-4.3	208	222	6.7	204	207	1.5
NV	458	403	-12.0	452	399	-11.7	404	408	1.0
OR	561	415	-26.0	555	514	-7.4	718	619	-13.8
WAE	666	652	-2.1	673	651	-3.3	712	713	0.1
WAW	410	377	-8.0	515	403	-21.7	305	279	-8.5
GUAM	1,180	1,078	-8.6	1,026	963	-6.1	1,313	1,428	8.8
NMI	89	138	55.1	135	70	-48.1	55	123	123.6
	16	17	6.3	26	27	3.8	24	14	-41.7
<b>10TH</b>									
CO	6,549	6,421	-2.0	6,529	6,471	-0.9	5,018	4,968	-1.0
KS	597	582	-2.5	545	519	-4.8	879	942	7.2
NM	734	728	-0.8	669	784	17.2	788	732	-7.1
OKN	2,909	2,616	-10.1	2,964	2,733	-7.8	1,579	1,462	-7.4
OKW	172	199	15.7	229	223	-2.6	158	134	-15.2
UT	75	69	-8.0	87	81	-6.9	51	39	-23.5
WY	721	934	29.5	726	762	5.0	456	628	37.7
	1,015	954	-6.0	1,036	1,030	-0.6	756	680	-10.1
	326	339	4.0	273	339	24.2	351	351	0.0
<b>11TH</b>									
ALN	6,218	5,922	-4.8	5,950	6,153	3.4	6,034	5,803	-3.8
ALM	515	541	5.0	468	507	8.3	453	487	7.5
ALS	291	253	-13.1	250	285	14.0	309	277	-10.4
FLN	271	291	7.4	259	294	13.5	298	295	-1.0
FLM	458	583	27.3	402	557	38.6	526	552	4.9
FLS	1,265	1,169	-7.6	1,202	1,269	5.6	1,289	1,189	-7.8
GAN	1,513	1,492	-1.4	1,602	1,457	-9.1	997	1,032	3.5
GAM	708	566	-20.1	647	644	-0.5	950	872	-8.2
GA,S	498	483	-3.0	555	519	-6.5	441	405	-8.2
	699	544	-22.2	565	621	9.9	771	694	-10.0

NOTE: PENDING TOTALS EXCLUDE EACH CASE IN WHICH THE DEFENDANT HAS BEEN A FUGITIVE SINCE BEFORE OCTOBER 1, 2005. HOWEVER, NO CASE WITH MULTIPLE DEFENDANTS HAS BEEN EXCLUDED UNLESS ALL DEFENDANTS IN THE CASE HAVE BEEN FUGITIVES SINCE BEFORE OCTOBER 1, 2005. THIS TABLE INCLUDES ALL FELONY AND CLASS A MISDEMEANOR CASES, BUT INCLUDES ONLY THOSE PETTY OFFENSE CASES THAT HAVE BEEN ASSIGNED TO DISTRICT JUDGES.

<sup>1</sup> PERCENT CHANGE NOT COMPUTED WHEN FEWER THAN 10 CASES REPORTED FOR THE PREVIOUS PERIOD.

<sup>2</sup> REVISED.